

---

**APPEALS BOARD  
UTAH LABOR COMMISSION**

**ELODIA TARULA,**

**Petitioner,**

**vs.**

**DESERET LABS and WORKERS  
COMPENSATION FUND,**

**Respondents.**

**ORDER SETTING ASIDE  
ALJ'S DECISION  
ORDER OF REMAND**

**Case No. 06-0705**

---

Elodia Tarula asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Sessions' denial of Ms. Tarula's claim for permanent total disability compensation under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

While working as a janitor for Deseret Labs on February 3, 2005, Ms. Tarula was run over by a forklift. She filed an application with the Commission to compel Deseret Labs and its insurance carrier, Workers Compensation Fund (referred to jointly as "Deseret" hereafter) to pay workers' compensation benefits, including permanent total disability compensation, for her injuries.

Judge Sessions held an evidentiary hearing on Ms. Tarula's application and concluded that, although she had suffered compensable injuries as a result of her work accident at Deseret, she was not entitled to permanent total disability compensation under § 34A-2-413 of the Act because she remained "gainfully employed."

In requesting Appeals Board review of Judge Sessions' decision, Ms. Tarula contends that her part-time, light duty work does not constitute "gainful employment" as that term is used in § 413(1)(c)(i) of the Act.

**FINDINGS OF FACT**

The parties do not dispute the facts set forth in Judge Sessions' decision. As already noted, Ms. Tarula worked for Deseret until February 3, 2005, when she was run over by a forklift. Before the accident, she worked full time, was on her feet all day, and engaged in "housekeeping, folding linen, packaging and machine operator."

**ORDER SETTING ASIDE ALJ'S DECISION/REMAND**  
**ELODIA TARULA**  
**Page 2 OF 3**

Now, Ms. Tarula is permanently restricted to light duty work for no more than 2 hours per day. She also experiences chronic pain and requires medication at all times. Deseret has made light-duty work available for Ms. Tarula that complies with her medical restrictions. She earns \$93.60 per week for two hours per day.

**DISCUSSION AND CONCLUSIONS OF LAW**

Sub-section 413(1)(b) and (c) establish several elements that an injured worker must satisfy in order to qualify for permanent total disability compensation. At issue in this case is § 413(1)(c)(i)'s requirement that the claimant "is not gainfully employed." Judge Sessions has interpreted this provision as precluding an injured worker from qualifying for permanent total disability compensation if he or she is performing any work, regardless of the nature or amount of the work.

In considering whether Ms. Tarula's part-time, light-duty work constitutes "gainful employment" under § 413(1)(c), the Appeals Board is mindful of the fundamental principle that the Utah Workers' Compensation Act is to be liberally construed and applied to provide coverage, with any doubt as to the right of compensation resolved in favor of the injured worker. See *Salt Lake City Corp. v. Labor Commission, et al.*, 2007 Ut. 4, issued January 12, 2007. Furthermore, the "gainful employment" provision of § 413(1)(c) must be interpreted and applied in furtherance of the statute's purpose and consistent with § 413 as a whole.

The Appeals Board also notes that another provision of the statute—§ 413(7)—permits an injured worker who has been found to be permanently and totally disabled to then accept "reasonable, medically appropriate, part-time work" and earn up to \$500 in any four-week period without suffering any reduction in permanent total disability compensation. It seems unlikely that the Legislature intended § 413(1)(c)(i)'s "gainful employment" provision to prevent someone from qualifying for compensation, while at the same time permitting someone who had already qualified as permanently and totally disabled to perform the same work, or even more work, with no loss of compensation.

The Appeals Board also notes that, under Judge Sessions' interpretation of § 413(1)(c)(i)'s "gainful employment" provision, employers could avoid liability by creating token employment for injured workers that did not replace the wages lost on account of the work injury, but nevertheless prevented the injured workers from qualifying for permanent total disability compensation. By the same token, the drastic consequences of such an interpretation of "gainful employment" would discourage injured workers from accepting part-time, light-duty work in order to begin the rehabilitation process. These results are contrary to the objectives of the workers' compensation system.

For the foregoing reasons, the Appeals Board concludes that Judge Sessions erred in holding that Ms. Tarula's part-time, light-duty work at Deseret constituted "gainful employment" within the

**ORDER SETTING ASIDE ALJ'S DECISION/REMAND**  
**ELODIA TARULA**  
**Page 3 OF 3**

meaning of § 413(1)(c)(i). Because other issues regarding Ms. Tarula's entitlement to permanent total disability compensation remain to be decided, the Appeals Board will remand this matter to the Adjudication Division for further action.

**ORDER**

The Appeals Board hereby sets aside Judge Sessions' decision of December 28, 2006, and remands this matter to the Labor Commission's Adjudication Division for further proceedings and order consistent with this decision. It is so ordered.

Dated this 23<sup>rd</sup> day of April, 2007.

---

Colleen S. Colton, Chair

---

Patricia S. Drawe

---

Joseph E. Hatch